# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C D Vernon

**Respondent:** CEG Packaging Limited

**Heard at:** Liverpool **On:** 26, 27, 28 29 November 2019 and 7 January 2020

**Before:** Employment Judge Benson
Mr G Pennie
Mrs J C Fletcher

**REPRESENTATION:**

**Claimant:** Mr M Broomhead - Consultant
**Respondent:** Mr G Isherwood - Consultant

# JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The complaint of harassment succeeds in respect of the allegations identified below.

2. The respondent subjected the claimant to unlawful harassment related to his disability.

3. All other claims fail and are dismissed

4. The respondent shall pay to the claimant the sum of £15,000 for injury to his feelings.

5. The respondent shall pay to the claimant the sum of £2,500 in respect of interest on the award.

# REASONS

## Claims

1. The claimant's claims and the List of Issues were agreed between the parties' representatives and the Tribunal at the outset of the hearing as set out below. The claim was one of disability discrimination. The claimant has Obsessive Compulsive Disorder ('OCD') and the claimant was accepted as a disabled person by reason of this disability for the purposes of these proceedings.

2. It was agreed that the allegations made by the claimant which formed the basis of the claimant's claim were limited to those set out in the Further Particulars served by the claimant dated 24 April 2019.

## Issues

3. *Equality Act 2020 ('EQA') section 13: direct discrimination because of* disability

a. Has the respondent subjected the claimant to the following treatment:

i. Dismissing the claimant?

b. Was that treatment "*less favourable treatment*", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on hypothetical comparators and or Colin Duvall.

c. If so, was this because of the claimant's Obsessive Compulsive Disorder ('OCD') and/or because of the protected characteristic of OCD more generally?

*EQA, sections 20 & 21 Reasonable adjustments:*

d. Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person?

e. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP(s):

i. That employees had to return to work after a period of absence on full time hours?

f. Did any such PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that: the claimant was less able to return to work full time hours because of his disability?

g. If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

h. If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The burden of proof does not lie with the claimant, however it is helpful to know what steps the claimant alleges should have been taken and they are identified as follows:

    i. To allow the claimant to change his shift from 7am to 4pm to 7am to 2pm.

i. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

*EQA, section 26: harassment related to disability*

j. Did the respondent engage in conduct as follows:

    Paragraphs 1-24 of the Further Particulars?

k. If so was that conduct unwanted?

l. If so, did it relate to the protected characteristic of disability, being the claimant's Obsessive Compulsive Disorder ('OCD')?

m. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

*EQA, section 27: victimisation*

n. Did the claimant do a protected act? The claimant relies upon the following:

    i. The conversation on 5 July 2018 with Karen Steel? (paragraph 23 of the particulars).
    ii. The conversation during a meeting on 14 August 2018 and with Karen Steel and Claire Richardson and email of the same date?

o. Did the respondent subject the claimant to any detriments as follows:

    i. Paragraphs 27, 28 and 29 of the Further Particulars?

p. If so, was this because the claimant did a protected act and/or because the respondent believed the claimant had done, or might do, a protected act?

*Time limits / limitation issues*

q. Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EQA? Dealing with this issue may involve consideration of subsidiary issues including: (i) whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; (ii) whether time should be extended on a "*just and equitable*" basis; and (iii) when the treatment complained about occurred.

**Evidence and submissions**

4. We heard evidence from the claimant himself, and also from a number of witnesses from the respondent company: Mr Graham, the Managing Director, Mr Gary Wilson, Fork Lift Truck Driver and Stock Conroller, Mr Joe Ely, Machine Setter, Mrs Karen Steel, Production Manager and Ms Clare Richardson, HR Manager. Further, we had an agreed bundle of documents together with additional documents which were produced during the course of the hearing. These were referred to by witnesses in their evidence but although clearly relevant, had not been disclosed. This was documentation relating to the redundancy process; an audio transcript of a meeting on 14 August and contemporaneous notes made by the claimant about his workplace issues from March 2018 onwards.

5. Unfortunately, the poor behaviour of the representatives disrupted these proceedings and caused avoidable delays. We also recalled Mr Vernon at one stage to deal with issues which arose out of the additional documentation.

6. We have heard and considered submissions from both Mr Isherwood and Mr Broomhead.

**Findings of Fact**

7. The claimant started employment on 3 July 2017 as a Factory Worker. He has a learning disability, being a language disorder, which was diagnosed at an early age. He also has Obsessive Compulsive Disorder ('OCD') which is accepted as a disability by the respondent for the purposes of these proceedings. This was diagnosed in 2009. The impact of the OCD upon the claimant is set out in paragraph 8 of his statement. Particularly relevant to these proceedings is that he can become easily irritated; some tasks he does may require him to work in silence, and if that silence is disturbed that can lead to him becoming distressed and sometimes needing to start the task again. The average task can take him longer than the average person.

8. Further, he can become agitated and shout and can behave aggressively. This was commented upon by the respondent's witnesses and it was accepted by the claimant in evidence before us that at times during his employment he did act in this way.

9. The respondent company manufactures cardboard boxes. It is a family company which has existed for some 60 years. After financial difficulties in 2018 Mr

Graham bought the company out of administration. There were some 14 factory workers out of a workforce of around 20 staff including the management team. Factory workers were trained on different machines. On each machine there would be an operator and an assistant. The claimant worked either as an operator or an assistant dependent on the particular machine in question.

10. One month after the claimant started work, Colin Duvall was employed. He was a friend of Joe Ely, another employee. Both of these employees worked on the machines. Gary Wilson was a forklift truck driver and stock controller and spent most of his day moving stock around the factory. His daughter was Joe Ely's partner. Karen Steel took over as Production Manager from December 2017. She had an office on the factory floor and her role included ensuring that the production targets were hit. She had line management for the factory staff. Clare Richardson was responsible for HR and finance and both she and Mr Graham, the Managing Director, spent most of their time in the office upstairs.

Colin Duvall

11. Colin Duvall was not present at this hearing. He no longer worked for the respondent. We are unclear what efforts were made to locate him. The majority of allegations of harassment made by the claimant are against Mr Duvall and were not witnessed. Although the evidence of the respondent's witnesses was that they did not see or hear anything that concerned them in relation to the treatment of the claimant, most were aware that there were tensions between Mr Duvall and the claimant. Indeed, from March 2018 these issues were brought to the attention of Karen Steel and thereafter Clare Richardson.

12. We found that the claimant was a helpful witness. We do not find that the claimant was a 'liar and fantasist' as alleged by Mr Isherwood. We consider that he gave truthful evidence, though his condition of OCD did result in him reviewing and analysing conversations that took place and made him have sudden feelings of anxiety and self-doubt. We consider that he replayed the various events that took place over in his mind, and at times this resulted in him misremembering details and being distrustful of others and their motivations. From March 2018 the claimant kept notes of all of the incidents that occurred at work from his perspective. Although we found these difficult to read in parts, they formed the basis of the claimant's witness statement and evidence. There were contemporaneous notes from March 2018 with a summary of events before that date, but were influenced by his condition. His notebook was made available to us and no questions were asked about it specifically by Mr Isherwood.

13. Much of the evidence was in dispute. Our findings are on the balance of probabilities having considered the evidence we have read and heard and the documents to which we have been referred. Where the incident identified only Colin Duvall as being present other than the claimant, we only have the evidence of the claimant. The claimant gave detailed evidence in his witness statement that went much wider and included additional issues other than the specific allegations he made in his pleadings and Further Particulars. Our findings of fact relate to the allegations as set out in Further Particulars (pages 25-29 of the bundle) which comprised and were agreed to form the basis of the claimant's claim.

14. We turn to our findings in relation to the specific allegations using the same number referencing as in those Further particulars.

Allegation 1 (December 2017)

(1) The claimant had difficulties with Colin Duvall from shortly after Mr Duvall joined the company. From October 2017, the claimant worked on the same machine as Mr Duvall and Joe Ely. Mr Duvall and Mr Ely constantly raised with the claimant things that he was not doing correctly. The claimant regularly asked them to repeat themselves, and Mr Duvall and Mr Ely became impatient with the claimant. They shouted sarcastically every time they spoke to him. He was told by Mr Duvall that he and Mr Ely were becoming impatient with him for not understanding them the first time they spoke.

(2) In December 2017 we find that Joe and Colin were impatient with the claimant as he alleged. It may not have been every time but it was regularly and the reason for that was that the claimant was asking them to repeat things.

Allegation 2 (December 2017)

(3) On an occasion after this in December 2017, the claimant refused to do overtime and was asked why by Colin Duvall. The claimant responded that it was none of his business and Mr Duvall shouted "what's your problem" to which the claimant replied that there were some things he just wanted to keep to himself. Mr Duvall then yelled at the claimant 'Why did you not just say that' and walked away.

(4) We find this allegation did happen as alleged by the claimant.

Allegation 3 (December 2017)

(5) Shortly after Allegation 2, the claimant was working with a pallet when Mr Duvall came across to the claimant and demanded to know what the problem was before. The claimant asked to be left alone and asked Colin Duvall to stop shouting at him. He explained that he might need them to repeat things two or three times as he had a language disorder. Mr Duvall said that he had dyslexia and it was frustrating for him. Mr Duvall then stormed off.

(6) We find this allegation did happen as alleged by the claimant.

Allegation 4 (December 2017)

(7) Later that day Joe Ely demanded to know what had happened. The claimant said he got impatient. Mr Ely was aggressive and said that 'no one is soft here, Gary will hit you' and 'I will smack you myself'. The claimant felt threatened.

(8) We did not find Joe Ely to be a convincing witness. We felt that he was not telling us the full story. On the balance of probabilities, we consider that this incident did happen as alleged by the claimant.

Allegation 5 (December 2017)

(9) Shortly afterwards, the claimant borrowed a tape measure from Mr Ely which Mr Duvall witnessed. Mr Duvall told the claimant that if Mr Ely did not get the tape measure back he would hit him.

(10) We find this allegation did happen as alleged by the claimant.

Allegation 6 (December 2017)

(11) In December 2017 the claimant was operating a table stitcher. Although in the claimant's witness statement at paragraph 30 he says it was a hand stitcher, it is clear to us that paragraph 31 of the statement identifies the machine as a table stitcher. Mrs Steel came across to the claimant, tapping her wrist and said, "I want to see how many you have done in an hour". Mrs Steel accepted that she regularly spoke to all employees asking them how many boxes they had completed in the hour. Although she does not wear a watch, the action of tapping her wrist we accept did happen, although it was not done 'nastily' as the claimant alleged.

Allegation 7

(12) In January 2018, Mr Duvall deliberately blocked the claimant off from the car park exit in his car. Mr Duvall laughed out of the window to one of the colleagues and told another member of staff, Lexie, that he was deliberately blocking him off. The other workers were able to leave but Mr Duvall continued to block the claimant.

(13) Neither Colin nor the other employee, Lexi, were present to give evidence. We find that the allegation did happen as alleged by the claimant.

Allegation 8 (January 2018)

(14) The following morning Mr Duvall laughed at the claimant as he made a joke about how he had blocked the claimant's exit from the car park the previous day. Other members of staff also laughed at the claimant as a result.

(15) Although there were three witnesses to this allegation and Colin present, none of them have given evidence, and we accept the claimant's version of events.

Allegation 9 (March 2018)

(16) In March 2018 Colin Duvall complained about the claimant to Karen Steel. Karen Steele met with the claimant. The claimant raised some of

the issues which he had been having with Mr Duvall. The complaints that the claimant raised with her were the incidents where Colin Duvall had asked why the claimant had refused to do overtime, and where the claimant told Colin Duvall he had language difficulties. We consider that it is unlikely that the claimant did at that time raise all of the issues as set out in paragraph 44 of his witness statement. He was called into this meeting without warning, and as such we consider that the list of complaints is more likely to have been compiled when he started making his notes after the meeting. The claimant was unhappy at being called to see Ms Steel when he considered that he was the victim. We consider that Ms Steel's version of this meeting is to be preferred. Ms Steel asked the claimant if he wanted to make the complaint formal and that it would be investigated correctly and officially. He did not want this. Ms Steel asked the same question of Colin Duvall, to which he also replied that he did not. Ms Steel therefore decided that the best solution was to have them not working together on the same machine to prevent further confrontation. She understood that this solution was working.

Allegation 10 (March 2018)

(17) In March 2018, Colin Duvall had been sent to buy soup by Mr Graham, the Managing Director. When he collected the soup he handed them out, including giving one to the claimant and a colleague. That night the claimant suffered from extreme diarrhoea, as did the colleague. They had different soup to the rest of the staff. The claimant later overheard Mr Duvall bragging to Joe Ely that he had spiked the chicken soup.

(18) We are not persuaded that the soup was spiked with laxative as alleged by the claimant. Although we accept that the claimant suffered diarrhoea, this was not as a result of the actions of Colin Duvall. We find, however, that the conversation which the claimant overheard was said, but that it was more likely to have been with the intention of 'winding the claimant up'.

Allegation 11 (March 2018)

(19) On a day in March 2018, each time Mr Duvall walked past the claimant's neatly stacked pile of flat boxes, he knocked them so that he claimant had to continually re-neaten them.

Allegation 12 (March 2018)

(20) There was a period during March 2018 when each time the claimant went into the toilet, the lights were flicked on and off. The claimant didn't know who was responsible but complained to Karen Steel that it was Colin Duvall.

(21) Gary Wilson had on one occasion accidentally switched the toilet light off while the claimant was in the toilet. When he heard of the claimant's complaint, he immediately volunteered that it was him and that it had happened only once. We find, however, that there were other incidents

when the lights were flicked on and off to irritate the claimant. We considered that it was likely to be Colin Duvall and possibly Joe Ely who did this. We accept that this was not Gary Wilson.

Allegation 13 (April 2018)

(22) The claimant had been assigned to do a task on his own and he noticed Mr Duvall and Mr Wilson talking. The claimant felt intimidated as they were both looking at him. He considered that Mr Duvall looked aggressive. Mr Duvall came across and said to him, "Hey Craig, last night when I let you out of your car parking space did you stick your finger up at me out of the window?". The claimant laughed and said no, I put my thumb up to say thank you, and Mr Duvall replied, "I thought you were sticking your finger up at me".

(23) We consider that the constant aggravation by Colin Duvall was by this time causing the claimant to feel that he was being targeted and uncomfortable in his work environment. This incident was another example of Mr Duvall, having seen the claimant looking at him, using the opportunity to come across and make a remark designed to upset him.

Allegation 14 (May 2018)

(24) In May 2018, Mr Wilson had parked his forklift truck in front of a pile of cardboard that the claimant was stacking. This occurred when the claimant was on his break. We accepted Mr Wilson's evidence that he took the opportunity to move the cardboard around the factory whilst it was quiet and that this was a natural place to leave the truck whilst he was working. We do not find that there was any deliberate attempt to annoy the claimant by Mr Wilson. We accepted Gary Wilson's explanation.

Allegation 15 (May 2018)

(25) In May 2018, the respondent's HR Manager notified staff that random drugs tests would be carried out. The claimant was told by Colin Duvall that they would check drivers first. The claimant used cannabis and Mr Duvall knew this. Shortly afterwards, the claimant was stopped by the Cheshire Police when driving home and was told that someone had reported that he was driving under the influence of drugs. He was tested and the test was negative. The police officer told the claimant that the complaint had been made by somebody in the Merseyside region. The following Monday, the claimant overheard Mr Duvall bragging to Mr Ely that he had reported the claimant to be driving under the influence of drugs to the police.

(26) We consider that in view of the previous behaviour of Colin Duvall that it was likely that he reported him following the discussions at work. The claimant was concerned enough to make a complaint to the police at the time and was provided with an incident number.

Allegation 16 (June 2018)

(27) In June 2018 when Mrs Steel was on holiday Mr Duvall and the claimant were assigned to carry out the same task but separately. Mr Duvall insisted to the claimant that they needed to work together using the gluing machine to be more productive. He was aggressive and argumentative. The claimant became anxious at the thought that Mr Duvall might do something else out of retaliation and attempted to defuse the situation by speaking again to Mr Duvall. We accept that Mr Duvall deliberately began an argument with the claimant over the use of the machine. This was in circumstances where he knew that the two were to work separately.

Allegation 17 (11 June 2018)

(28) Mr Wilson, the forklift truck driver, needed to gain access past where the claimant was working. Mr Ely, rather than asking the claimant to move his table, deliberately pulled it out of the way aggressively such that the weight holding the flat boxes came off and the pile of flat boxes went all over the floor. Another colleague asked Mr Ely whether he was going to pick them up, and Mr Ely shrugged his shoulders and walked off.

(29) We accept that an incident probably happened that day but that it was a minor incident, but that in view of Mr Ely's previous actions he took the opportunity to irritate the claimant. His refusal to pick it up supports our view.

Allegation 18 (12 June 2018)

(30) Later that day Mr Ely came over and stood by the claimant, looking at him and staring in an intimidatory fashion. The claimant ignored him.

(31) We find on balance that in view of our previous findings this is likely to have occurred.

Allegation 19 (12 June 2018)

(32) On 12 June when the claimant came back from his break, he found that a guard on his machine had been adjusted whilst he was not there. The same day, after he came back following his dinner break he found that the guard on the other side of the machine had been adjusted but also that the machine would not switch on. An isolation switch had been switched off even though there was no reason to isolate the machine, as the claimant had already done so for health and safety reasons before he went to dinner. When he came back from his final break of the day he found that the left and right-hand side guards of the machine had been adjusted.

(33) The claimant believed that it was Gary Wilson who tampered with the machine as he was still working on the factory floor while other staff had their breaks. We do not find this to be the case and believe Mr Wilson in

this respect. We consider this happened but that it was not Mr Wilson who was responsible. We consider that it was most likely Mr Duvall.

Allegation 20 (13 June 2018)

(34) When the claimant came into work the following day the guards on the gluer needed adjusting again. He was spoken to by another member of staff as he was not getting through his work fast enough as a result. This made the claimant anxious as he considered that the interference with his machine was slowing him down in getting his work done.

(35) We consider this happened but for the reasons set out above, that it was not Gary Wilson who was responsible. Again, we consider that it was probably Colin Duvall.

Allegation 21 (13 June 2018)

(36) Later that day, following a further break, the claimant found that both the left and right side guards of the gluer had been adjusted incorrectly. He found that the same thing had happened again after he came back from his final break of the day. Mr Duvall asked him whether he was “alright”.

(37) We consider this happened but for the reasons set out above, that it was not Gary Wilson who was responsible. Again, we consider that it was probably Colin Duvall.

Allegation 22 (18 June 2018)

(38) When Mrs Steel returned from holiday, she informed the claimant and others that the Managing Director had complained about the amount of work that had been completed the week before whilst he was away. She tapped her wrist, and said “I want to see how many of these are competed within the hour”. However, we accept that she spoke to most of the employees in the same way as work generally had slowed down during the holiday.

Allegation 23 (5 July 2018)

(39) On 5 July the claimant was late returning after his lunch break. Mrs Steel challenged him and brought him to her office. During that discussion the claimant explained his mealtime routine and concerns he had that his food might have be tampered with. He then went on to explain the detail of the complaints about Colin Duvall and his other colleagues. Karen Steel offered to investigate but warned that an outcome could be the claimant's dismissal. We consider that she was irritated by the disagreement between the claimant and Colin Duvall and she pointed out a possible outcome of the investigation. It seems to us that Mrs Steel had two employees who were causing her problems. She was now being asked to potentially formally investigate a number of complaints which in her view both parties may have been to blame for, and was trying to dissuade the claimant from going down that route. During that conversation Mrs Steel commented upon the number of

times the claimant needed to visit the toilet and suggested that he saw the GP. The claimant saw and understood that this was an instruction and went to see his GP on 7 July.

(40) Later that day, on 5 July, the claimant went back to see Mrs Steel as he was getting anxious that based upon what she had said she might sack him, and he wanted to make sure that she did not commence an investigation. She reassured him that that would not happen and she then went on, at his request, to provide guidance as to how to speed up his work. He outlined some of his difficulties but the claimant accepts that he may not have used the term "OCD".

Allegation 24 (9 July 2018)

(41) The claimant attended work with his sicknote on 9 July. He gave it to Clare Richardson and during the discussion with her and Karen Steel the claimant explained about the difficulties that his OCD caused him, and particularly that it caused him to be too thorough and therefore not the quickest of workers at times. He explained that this had happened to him before and that he was now feeling worthless in factory working too. The claimant had worked in a number of environments which had not worked out for him, and he was upset that he did not seem to suit factory work either. When he said he had been called "slow" all his life Karen Steel responded by saying, "well I have been called fat all my life". The claimant went on sick leave and never returned to the factory floor.

Allegation 25 (14 August 2018)

(42) At the request of the claimant's social worker a meeting was held with Ms Richardson and Mrs Steel to discuss the claimant's return to work. The claimant expressed all of the difficulties which he had and the impact upon his work. Adjustments to assist the claimant to return to work were discussed and it was agreed that the claimant should have the reduced hours requested but that it would be reviewed to see how it was working after two weeks. He also requested to work in different places within the factory and Mrs Steel was concerned as the manager as she was unsure where she was going to be able to place him. She expressed this during the meeting.

(43) On the evening of 14 August, the claimant became anxious again and emailed the respondent setting out specific complaints about Colin Duvall and saying that he was concerned that when he did return the atmosphere in the factory would not be healthy. He was anticipating that his difficulties with Colin Duvall would still be there when he returned. There was no plan so far as we are aware to address the issues which the claimant had raised about Mr Duvall's behaviour.

Allegation 26 (15 August 2018)

(44) The following day the respondent's accountant met with the Managing Director and HR Manager and warned them that they needed to save

somewhere in the region of £60,000. A number of options were looked at and decisions taken to sell one of the vehicles, machinery and to make redundancies. The following day the claimant received an invitation to a redundancy "at risk" meeting.

(45) We have considered the evidence which has been provided by the respondent in relation to the redundancies and we have seen the minutes of a meeting on 16 August. Although we consider that Mrs Richardson and Mr Graham must have realised the financial difficulties the respondent was in, we consider on balance that the decision that there was a need to make redundancies was only made on 15 August after the meeting with the company accountant.

(46) The claimant was expecting a response from Clare Richardson to his email of 14 August. He did not receive one. On 15 August, he did however receive an invitation to a consultation meeting on the following day to discuss his potential redundancy.

(47) We have given much consideration to the timing of the redundancy exercise. Having reviewed the minutes of the meeting on 16 August and the fact that the redundancy exercise involved a number of employees, we consider that the need for redundancies was genuine and that it was coincidental that the claimant was notified of it the day after his meeting with the respondent.

Allegation 27 (16 August 2018)

(48) On 16 August the redundancy consultation meeting was held. It involved six members of staff: three full-time and three part-time, all short service staff. They were told that the selection for redundancies would be based upon last in first out and machine skills. The situation was explained to them and following the meeting the respondent carried out a selection process. The claimant and Chris, a colleague, were selected. We were referred to the selection sheets which were completed separately by Ms Steel and Ms Richardson. The claimant's skills score was 65 with a total of 76, and for Chris it was 25 with a total of 26. Colin Duvall's was 75 with a total of 85. The claimant and Mr Duvall has similar lengths of service. During this hearing, the claimant challenged the scoring. The claimant was, in our view, underscored on the table stitcher skills mark as we accept his evidence that he operated the table stitcher rather than being an assistant. That would have given him a further 5 points. We consider that the marks for Colin Duvall as operator for the casemaker machine are appropriate. Marks were either given as a 10 or a 5 and Mr Duvall as an operator received a 10. The correct total scores therefore were Mr Duvall 85 and the claimant 81.

(49) In any event, the respondent's most profitable machine was the casemaker which Mr Ely and Mr Duvall operated. The respondent needed to have a second member of staff, being Mr Duvall, who could cover the machine in holidays. The claimant could not operate this

machine. There were therefore good reasons for the claimant being selected for redundancy which were not related to his disability.

Allegation 28 (17 August 2018)

(50) On 17 August the claimant was notified that he had been selected for redundancy and was given notice of dismissal.

15. These events created a hostile and at times intimidating environment within which the claimant worked. It is clear from his evidence that he felt bullied by Colin Duvall and Joe Ely and was suspicious of other colleagues' motivations, to the extent that he was signed off from work in July 2018 and was fearful of returning. His email to Clare Richardson of 14 August sets out his concerns. We also noted from his contemporaneous notes the adverse impact that this behaviour was having upon his mental wellbeing.

16. Following the claimant's dismissal by reason of redundancy, he has been unable to return to work. He has had further assistance from an Occupational Therapist and other medical experts who have assisted him in identifying work which he may be able to do. His condition, he accepts makes it difficult for him to keep up with colleagues whilst doing production work, which has always led to previous posts being terminated and led to difficulties in his role with the respondent. He considers that he must addressed this issue, if he is able to successful hold down a post in the future. He is now looking for office based work. The claimant has made efforts to retrain in IT. This has also proved difficult as parts of the role involve installing hardware which makes up the network. He has lost confidence carrying out physically demanding tasks after concerns about his speed expressed by Karen Steel. His mental health issues, he considers will continue until he is able to replace the confidence he has lost following Mrs Steel's issues with the speed of his work.

17. We have had sight of the Occupational Therapist's report dated 20 November 2018. Within that report it states that the claimant has:

> "….significant problems maintaining employment due to his difficulties with language, concentration, anxiety and obsessional thinking patterns."

18. The claimant has had a DWP medical assessment and was awarded the limited capability for work and work-related activity benefit.

19. The claimant's relationship with his family has broken down. This has resulted from the loss of his job with the respondent and the resultant financial implications causing in tensions within his family environment. The claimant's mental wellbeing changed following the events which led to his dismissal. He considers that he has had a loss of control over his life. Lack of sleep causes headaches and nausea. He is agitated, annoyed and angry and his inability to concentrate and constant worrying about his finances has taken over. He is on medication.

**The Law**

Direct Discrimination

20. Section 13 (1) of the EQA provides that:

> *A person (a) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably that A treats or would treat others.*

21. Section 23 (1) provides that:

> *On a comparison of cases for the purposes of section 13….there must be no material differences between the circumstances relating to each case.*

22. Section 23(2) provides that:

> *The circumstances relating to each case, include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability.*

Duty to make reasonable adjustments

23. By section 20 of EQA the duty to make adjustments comprises three requirements.

24. The first requirement, by section 20(3), incorporating the relevant provisions of Schedule 8, is a requirement, where a provision, criterion or practice of the employer's puts a disabled person at a substantial disadvantage in relation to the employer's employment in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

25. A disadvantage is substantial if it is more than minor or trivial: section 212(1) EQA.

26. Paragraph 6.28 of the EHRC *Code* lists some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

> (1) Whether taking any particular steps would be effective in preventing the substantial disadvantage;
>
> (2) The practicability of the step;
>
> (3) The financial and other costs of making the adjustment and the extent of any disruption caused;
>
> (3) The extent of the employer's financial and other resources;
>
> (5) The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

(6) the type and size of employer.

27. Claimants bringing complaints of failure to make adjustments must prove sufficient facts from which the tribunal could infer not just that there was a duty to make adjustments, but also that the duty has been breached. By the time the case is heard before a tribunal, there must be some indication as to what adjustments it is alleged should have been made.

Harassment

28. Section 40(1)(a) EQA prohibits harassment of an employee. The definition of harassment appears in section 26, for which disability is a relevant protected characteristic, and so far as material reads as follows:

> *(1) A person (A) harasses another (B) if -*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
>
> *(b) the conduct has the purpose or effect of*
>
> *(i) violating B's dignity, or*
>
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B…*
>
> *(4) In deciding whether conduct has the effect referred to sub-section (1)(b), each of the following must be taken into account -*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect.*

29. Chapter 7 of the EHRC Code deals with harassment.

Victimisation

30. Section 27 EQA provides protection against victimisation.

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because —*
>
> *(a) B does a protected act, or*
>
> *(b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act —*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

*(4) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

*(5) This section applies only where the person subjected to a detriment is an individual.*

*(6) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

31. It is clear from the case law that the tribunal must enquire whether the alleged victimisation arises in any of the prohibited circumstances covered by the Act, if so did the employer subject the claimant to a detriment and if so what that because the claimant had done a protected act. Knowledge of the protected act is required and without that the detriment cannot be because of a protected act.

Burden of proof

32. Section 136 of EQA applies to any proceedings relating to a contravention of EQA. Section 136(2) and (3) provide that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A shows that A did not contravene the provision.

33. We are reminded by the Supreme Court in *Hewage v. Grampian Health Board* [2012] UKSC 37 not to make too much of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

Time Limits

34. The time limit for bringing a claim appears in section 123 EQA as follows:-

*(1) subject to Sections 140A and 140B proceedings on a complaint within Section 120 may not be brought after the end of –*

*(a) the period of three months starting with the date of the act to which the complaint relates, or*

*(b) such other period as the Employment Tribunal thinks just and equitable.*

*(2) …*

*(3) for the purposes of this section –*

*(a) conduct extending over a period is to be treated as done at the end of the period;*
*(b) failure to do something is to be treated as occurring when the person in question decided on it."*

Remedy

35. Awards of compensation in claims of discrimination are governed by section 124 of the EQA which provides that:

*…. (2) The tribunal may—*

*(a)make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*

*(b)order the respondent to pay compensation to the complainant;*

*(c)make an appropriate recommendation.*

36. The Tribunal has the same power to grant any remedy which could be granted in proceedings in tort before the civil courts. Compensation based on tortious principles aims to put the Claimant, so far as possible, into the position that he/she would have been in had the discrimination not occurred, essentially a "but for" test in causation when assessing damages flowing from discriminatory acts. Ministry of Defence v Cannock [1994] ICR 918

37. Awards may be made for injury to the claimant's feelings arising out of the detriments as found to be proven. The purpose of an award for injury to feelings is to compensate the Claimants for injuries suffered as a result of the discriminatory treatment, not to punish the wrongdoer. Prison Service and others v Johnson [1997] ICR 275.

38. In accordance with Ministry of Defence v Cannock [1994] above, the aim is to award a sum that, in so far as money can do so, puts the Claimants in the position he or she would have been had the discrimination not taken place.

39. An Employment Tribunal should not allow its feelings of indignation at the employer's conduct to inflate the award made in favour of the Claimants. Corus Hotels Plc v Woodward [2006] UK EAT/0536/05.

40. Guidance was given in Vento v Chief Constable of West Yorkshire 2003 ICR 318) as to the appropriate level of injury to feelings awards. Reference was made to three bands of awards. Sums within the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory

treatment. The middle band was to be used for serious cases which did not merit an award in the highest band. Awards in the lower band were appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

41. The bands originally set out in Vento have increased in their value due to inflation and, a further uplift of 10% given to general damages pursuant to the case of Simmons v Castle [2012] EWCA Civ 1039. This had given rise to Presidential Guidance which re-drew the bands as follows: In respect of claims presented on or after 6 April 2018, the Vento bands are as follows: a lower band of £900 to £8,600 (less serious cases); a middle band of £8,600 to £25,700 (cases that do not merit an award in the upper band); and an upper band of £25,700 to £42,900 (the most serious cases), with the most exceptional cases capable of exceeding £42,900.

42. The Tribunal may also as part of the compensation for injury to feelings, award aggravated damages: The EAT in The Commissioner for Police v Shaw 2012 ICR 464 gave guidance as to the nature of aggravated damages and principles governing their award. These can be summarised as follows:

(a) The manner in which the wrong was committed. The basic concept is that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. The phrase "high-handed, malicious, insulting or oppressive" is often referred to in such circumstances. It was stated to give a good general idea of the territory involved but not to be treated as an exhaustive definition.

(b) Motive. Discriminatory conduct which is evidently based on prejudice or animosity which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same act would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. The point was made however, this can only be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate injury. There is also in practice a considerable overlap with (a) above.

(c) Subsequent conduct. The practice of awarding aggravated damages for conduct subsequent to the actual act complained of to cover cases where the defence is conducted in an unnecessarily offensive manner.

**Discussion and Conclusions**

Harassment Claim

43. We consider that Colin Duvall took the opportunity of aggravating the claimant wherever possible. We generally accept the claimant's evidence on incidents where only him and Mr Duvall were present. We consider that at times Joe Ely was also involved.

44. The claimant does not know why Colin Duvall took delight in picking on him. In answer to a question from us he felt that that might have something to do with his personality. He was quiet whereas Colin talked constantly. What the claimant wanted to do was to be left to be able to get on with his job quietly and without disruption. As part of his OCD he needed quiet to be able to carry out some of his tasks otherwise he could become distressed and then need to start the job all over again. What is clear is that the claimant was more susceptible to being provoked because of his condition of OCD. We note particularly that one of the effects of the claimant's condition was that be became easily irritated. Because Colin Duvall knew that he would get a reaction and the claimant would respond, sometimes aggressively, he did it all the more. It was this which in our view specifically related the behaviour of Colin Duvall and Joe Ely to the claimant's disability for the purposes of the harassment claim.

45. We deal with the specific allegations made below but we find that all of those found proved in which Colin Duvall and/or Joe Ely were involved, taken together were with the purpose of creating a hostile and intimidating environment for the claimant. We therefore find allegations 1, 4, 5, 7, 8, 11, 12, 13, 15, 16, 17, 18, 19, 20 and 21 amounted to unwanted conduct related to the condition of OCD which was for the purpose of creating a hostile and intimidating environment for the claimant. It is clear to us that all of this conduct was unwanted by the claimant. It was made clear to Colin Duvall that the claimant wanted to be left alone to get on with his job but Colin Duvall, together at times with Joe Ely, ignored this. The claimant's claim of harassment in relation to these allegations succeeds.

46. Allegations 2, 3, 6, 9, 10, 14 and 22 did not in our view have the purpose required by section 26 EQA to amount to harassment, nor was it reasonable to have that effect (having considered the perception of the claimant and the other circumstances of the case).

Allegation 23 (Incident on 5 July)

47. This was the comment made by Karen Steel that although she could investigate the complaints about Colin Duvall, it could lead to the claimant being sacked. We find that this was also unwanted conduct which very much worried the claimant. The context of this comment was because the claimant had given Mrs Steel the details of his difficulties with Colin Duvall. We find therefore that the comments can be said to be related to the claimant's OCD as the need for an investigation would not have arisen had the claimant not been harassed by Colin Duvall.

48. In view of the claimant's perceptions, particularly his feelings of self-doubt and the circumstances of this case, we consider that it was reasonable for the comment made by Mrs Steel to have the effect of intimidating the claimant and causing a hostile environment. This was even more stark when the claimant went back to see Mrs Steel after that conversation as he was anxious to ensure she did not start an investigation as he did not want to risk being dismissed. This allegation therefore also succeeds.

Allegation 24 (9 July)

49. The actions of Karen Steel in her comment to the claimant that she had been 'called fat all her life' had the effect of both being offensive and humiliating to the claimant, taking into account his perception and the situation he was in. It was reasonable in our view for it to have had that effect. Her comment dismissed, in a flippant manner, the claimant's disability and the impact it had upon him. The fact that he was slow in his work and the difficulties that had caused him the past in the different roles he had undertaken was dismissed in a thoughtless manner by Mrs Steel. Although she did not intend it would have that effect, it was offensive and humiliating for him. That claim also therefore succeeds.

Direct Discrimination

50. Turning then to the claim of direct discrimination, this claim relates only to the claimant's dismissal. The claimant alleges that he was dismissed because of his disability, being OCD. He names his comparator as Colin Duvall or a hypothetical comparator.

51. Although the claimant was treated less favourably than Mr Duvall in that he was dismissed, it cannot be said that Mr Duvall was in the same material circumstances. The reason for the claimant's dismissal was redundancy. In view of our findings of fact above, the redundancy selection criteria used were length of service and machine skills. The length of service of the claimant and Mr Duvall were very similar but Colin Duvall had superior machine skills which were required by the respondent going forward.

52. Although we consider that the burden of proof did shift to the respondent in that the timing of the claimant's dismissal was sufficient to amount to facts from which we could conclude that there was discrimination on the basis of the claimant's disability, the evidence produced by the respondent is such that we are satisfied that they have shown that there was a genuine redundancy situation and that the basis upon which the claimant was selected was not because of his disability. That claim therefore fails and is dismissed.

Victimisation Claim

53. The claimant contends that the protected acts were the conversation with Karen Steel on 5 July and the conversation during the meeting with Karen Steel and Clare Richardson on 14 August together with the email which followed.

54. On balance, we consider that certainly the conversation and email of 14 August and potentially the conversation on 5 July amount to protected acts under section 27(2)(c) and (d) of the EQA in that the claimant made allegations about his harassment by Colin Duvall which would have amounted to contraventions of the Act.

55. We then go on to consider whether the respondent subjected the claimant to the detriments which are alleged at allegations 27, 28 and 29. They are:

a. allegation 27: not replying to an email and instead sending an invitation to a redundancy meeting;

b. allegation 28: requiring the claimant to attend a redundancy meeting,

c. allegation 29: dismissing the claimant.

56. It is accepted by the respondent that each of these matters did occur, however we consider that not replying to the email or requiring the claimant to attend a meeting could not be said to amount to a detriment. The meeting itself was part of a process which ultimately led to the claimant's dismissal, but the meeting itself and the invitation to it was for the claimant's benefit in order that he could engage in consultation. The failure to respond to the email was unfortunate, but in the difficult situation in which the respondent found themselves on that day, it was understandable. In respect of the dismissal, clearly that was a detriment to the claimant.

57. Was therefore the dismissal of the claimant because he had done a protected act? In view of our findings of fact above we consider that the reason for the dismissal was not because of the protected acts. Although we consider that the timing of the claimant's dismissal is sufficient to shift the burden of proof to the respondent under section 136 of the EQA we consider that the respondent has proved that the dismissal and the claimant's selection for redundancy were not because he had done the protected acts.

58. For the sake of clarity, although not strictly necessary, if we had found that the other allegations (26 and 27) amounted to detriments, again we do not consider that they were done because of the protected acts of 5 July and 14 August. The claim of victimisation therefore fails and is dismissed.

Reasonable Adjustments

59. The respondent accepts that it knew that the claimant was disabled by reason of the OCD at the meeting on 14 August, which was the date upon which the respondent sought reasonable adjustments. The PCP was amended slightly by Mr Broomhead at the outset of the hearing such that it became: was there a PCP that employees had to return to work after a period of absence on full-time hours? This PCP would put the claimant at a disadvantage as a disabled person, however at the meeting on 14 August adjustments to assist the claimant were discussed and it was agreed that the claimant should have the reduced hours requested but that it would be reviewed to see how it was working after two weeks.

60. The duty therefore did arise and the respondent agreed to the adjustments requested. We consider that it was perfectly reasonable for them to have reviewed how matters were going at the end of the two-week period. In any event the claimant did not return to work because of the redundancy situation and his continued ill health. The claim that the respondent failed in its duty to make reasonable adjustments therefore fails and is dismissed.

Time Issues

61. We looked at the question of whether the claims were presented in time and whether there was a series of continuing acts. We consider that each of the acts of harassment, which are the only claims that we have found to have been successful, by Mr Duvall, Mr Ely and Karen Steel amounted to a series of continuing acts of discrimination such that they amounted to continuing discrimination extending over

the full period. The last discriminatory act was on 9 July. Normal limitation would be 8 October. The ACAS early conciliation certificate shows that Day A was 6 October and Day B was 5 November, and we have checked that because we note that was slightly different that which Mr Isherwood indicated in his submissions. The claim was presented on 14 November, which as it is within a month from Day B it is in time.

62. The claims that were successful were presented within time.

**Remedy**

Loss of earnings

63. We have considered the Heads of Loss as set out by the claimant in the Schedule of Loss.

Compensation for Future losses

64. The claimant seeks compensation for the loss of his income following his dismissal. He has not gained new employment since. As set out above, we must consider the position the claimant would have been in had the harassment not occurred. We consider that the future losses cannot be laid at the door of the respondent. If the harassment had not occurred the claimant would in our view still have been made redundant as at 18 August 2018. His losses therefore flow from his dismissal, which we have found was not discriminatory and not from the unlawful harassment to which he was subjected.

65. We have further considered whether the difficulties which the claimant has had in obtaining and retaining new work following his redundancy could be said to flow from the harassment. Mr Broomhead asks us to accept that but for the harassment, the claimant would have been able to obtain new work and to hold down any new role. He refers to the impact which the harassment has had upon his mental health.

66. There is a lack of medical or other evidence before us which links the harassment of the claimant to his inability to obtain or hold down new employment. Indeed, Ms Johnston's report refers to the moderate depressive disorder which the claimant suffered over the few months from his dismissal being a consequence of being told that his work was not up to standard by several employers over the years and eventually being laid off. She does not refer to his depressive disorder being as a consequence of or flowing from the harassment. The claimant himself refers to the deterioration of the relationships with his family and the need to move out of the family home which have contributed to his mental health issues, being linked to his dismissal and the financial difficulties which have flowed from this.

67. On previous occasions when the claimant has lost employment, he has been able to find new work relatively easily but on this occasion he has come to accept that his OCD makes it difficult to work at speed in factory and similar environments. He hasn't therefore looked for new work of this type and he has changed direction to seek office based roles which may be more suitable for him. This is taking time as he needs to retrain and is taking steps to do this, with appropriate assistance.

68. The evidence of the claimant in his witness statement is that he is predisposed to difficulties in retaining employment. We refer specifically to the following paragraphs: paragraph 16 which refers to the medical evidence which was provided by his Occupational Therapist in November 2018, that the claimant "has significant problems maintaining employment due to his difficulties with language, concentration, anxiety and obsessional thinking patterns"; paragraph 5 which refers to the previous struggles that the claimant has had in the workplace which he has discussed with his Occupational Therapist; paragraph 7 referring to the investigations which have been undertaken into the claimant's condition, which in turn he says has meant his lack of ability to be productive in the working environment still needed addressing; paragraph 9 referring to the fact that the claimant was unable to keep up with his colleagues while doing productive work which has always led to his post being terminated, and that it was important that he gets this issue addressed; paragraph 11 which refers to the claimant's difficulties and challenges and particularly those in relation to being too slow; and paragraph 23 in which the claimant refers again to how difficult it is to complete tasks due to his speed.

69. In these circumstances we conclude that the claimant's inability to obtain and retain new work did not flow from his harassment that he suffered.

Injury to Feelings

70. For the reasons set out below, we consider that the compensation to the claimant falls within the middle Vento band. We assess the injury to feelings award at £15,000.

71. The factors which we have taken into account in coming to our decision are these:

72. The harassment of the claimant occurred over a lengthy period from December 2017 to July 2018, which was a seven month period.

73. The claimant was, because of his disability, more vulnerable to the behaviour and actions of Mr Duvall, Mr Ely and Ms Steel. It therefore had a more severe impact upon his feelings than someone who did not have such a disability.

74. The majority of the conduct and behaviours were persistent low level verbal bullying, but there were also some significant examples of dangerous practices.

75. The respondent did seek to separate the claimant from Mr Duvall but did not seek to investigate the claimant's concerns, even when the specific complaints were raised by the claimant in March and July 2018. Although the claimant resisted a formal investigation, the respondent did very little to find out what was going on.

76. The events leading up to July 2018 caused the claimant to be signed off work with OCD and bladder problems, and he was in the process of discussing his return when the redundancy situation arose. From the discussions which took place with the respondent, despite Mr Duvall's behaviour, he felt he was able return to work, though he was concerned whether the respondent would put in place something to ensure that the harassment no longer continued.

77. It is clear from the evidence given by the claimant and the notes that he made at the time, that the treatment of him was causing him to feel anxious, particularly when he wanted to succeed in his new role. The injury to his feelings is, however, in our view not wholly as a result of the harassment he suffered. As set out already, we consider that both his pre-existing mental health issues and the non-discriminatory dismissal by reason of redundancy also had an impact upon his feelings.

78. In relation to the claim for aggravated damages, we do not consider that they are appropriate in these circumstances. We have considered Mr Broomhead's representations in this regard but do not consider that there were sufficient aggravating features in the categories described in Commissioner of Police v Shaw above to trigger an award. Of the submissions made by Mr Broomhead, the only one which we consider could have resulted in an award of aggravated damages is the reference to Mr Isherwood using the phrase "liar and fantasist" when referring to the claimant's evidence. Regrettably, the use of that phrase was perpetuated by Mr Broomhead during these proceedings, and the behaviour of both representatives was mutually antagonistic. The way in which these proceedings were conducted by Mr Broomhead and, at times, Mr Isherwood was unprofessional and unhelpful to both the Tribunal and the parties.

Interest

79. We award also interest at 8% from December 2017 which was the first of the allegations of harassment. That amounts to £2,400.

80. The total award to the claimant is £17,400.

Employment Judge Benson

Date: 3 February 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
3 February 2020

FOR THE TRIBUNAL OFFICE

# NOTICE

## THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2416883/2018**

Name of case: **Mr CD Vernon** v **CEG Packaging Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 3 February 2020

"the calculation day" is: 4 February 2020

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

# INTEREST ON TRIBUNAL AWARDS

***GUIDANCE NOTE***

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at **www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426**

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.